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No. 88-2000

In the Supreme Court of the United States

OCTOBER TERM, 1989

STEVE COWPER, GOVERNOR OF ALASKA, ET AL., PETITIONERS

v.

SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Section 19(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1345(a), entitles the Governor of an affected State to submit recommendations "regarding the size, timing, or location of a proposed lease sale" to the Secretary of the Interior. Section 19(c) (43 U.S.C. 1345(c)) provides that the Secretary must accept these recommendations "if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State." Section 19(d) (43 U.S.C. 1345(d)) further provides that the Secretary's acceptance or rejection of the recommendations shall be final "unless found to be arbitrary or capricious." In this case, the Secretary had previously acceded to requests by the Governor of Alaska to delay for nine years a proposed lease sale in the North Aleutian Bay off the southwest coast of Alaska and to delete 83% of the planning areas from that sale. Then, after a number of consultations, the Secretary submitted a 72-page "Statement of Reasons" explaining his rejection of the Governor's requests to delay the sale for another nine years and to delete all near-shore tracts. The question presented is:

Whether the court of appeals correctly concluded that the Secretary of the Interior's decision to proceed with the lease sale complies with Section 19 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1345, and is neither arbitrary nor capricious.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	12
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Amoco Production Co. v. *Village of Gambell*, 480 U.S. 531 (1987) 9

California v. *Watt*, 683 F.2d 1253 (9th Cir. 1982), rev'd, 464 U.S. 312 (1984) 5, 11, 14

Hodel v. *Tribal Village of Akutan*, 480 U.S. 943 (1987) 9

North Slope Borough v. *Andrus*, 642 F.2d 589 (D.C. Cir. 1980) 15, 16

Park County Resource Council, Inc. v. *United States Dep't of Agriculture*, 817 F.2d 609 (10th Cir. 1987) 15

Secretary of the Interior v. *California*, 464 U.S. 312 (1984) 2, 3, 4, 7, 13, 14, 15, 16

Tribal Village of Akutan v. *Hodel*, 792 F.2d 1376 (9th Cir. 1986), cert. granted and remanded, 480 U.S. 943 (1987), on remand, 816 F.2d 685 (9th Cir. 1987) 9

Village of Gambell v. *Clark*, 746 F.2d 572 (9th Cir. 1984) 9

Village of Gambell v. *Hodel*, 774 F.2d 1414 (9th Cir. 1985) 9

Statutes and regulations:

Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101 *et seq.* 9

§ 810, 16 U.S.C. 3120 ..... 6, 9

Statutes and regulations—Continued: Page

Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.* 3
§ 307(c)(3)(B), 16 U.S.C. 1456(c)(3)(B) 14
Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* 2, 6, 8-9
National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* 2, 8
Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.* 1, 7, 8
§ 3(3), 43 U.S.C. 1332(3) 2
§ 5(a)(2)(A)(i), 43 U.S.C. 1334(a)(2)(A)(i) 3
§ 8(a), 43 U.S.C. 1337(a) (1976) 13-14
§ 8(a), 43 U.S.C. 1337(a) 2
§ 11, 43 U.S.C. 1340 (1982 & Supp. V 1987) .. 3
§ 11(c)(1), 43 U.S.C. 1340(c)(1) 3
§ 18, 43 U.S.C. 1344 2
§ 18(c), 43 U.S.C. 1344(c) 2
§ 18(d)(2), 43 U.S.C. 1344(d)(2) 2
§ 19, 43 U.S.C. 1345 .....10, 11, 12, 13, 14
§ 19(a), 43 U.S.C. 1345(a) 2-3, 12, 13
§ 19(b), 43 U.S.C. 1345(b) 12
§ 19(c), 43 U.S.C. 1345(c) 3, 13, 14
§ 19(d), 43 U.S.C. 1345(d) 10, 13
§ 25, 43 U.S.C. 1351 3
§ 25(d), 43 U.S.C. 1351(d) 4
§ 25(h)(1)(D)(i), 43 U.S.C. 1351(h)(1)(D)(i) .. 4
30 C.F.R. 250.42(a) 15
40 C.F.R. 1502.9(c)(1) 6

Miscellaneous:

50 Fed. Reg. 51,372-51,380 (1985) 8

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OPINIONS BELOW

The opinion of the court of appeals, as amended (Pet. App. A1-A28), is reported at 869 F.2d 1185. The opinions of the district court (Pet. App. B1-B14 and C1-C12) are not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 1988. A petition for rehearing was denied on March 9, 1989 (Pet. App. A6). The petition for a writ of certiorari was filed on June 7, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The sale and development of offshore land for oil and gas production is controlled by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, which establishes a national policy of making the outer con-

tinental shelf (OCS) "available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." 43 U.S.C. 1332(3). The OCSLA creates four separate stages in the administrative process: "(1) formulation of a 5-year leasing plan by the Department of the Interior; (2) lease sales; (3) exploration by the lessees; (4) development and production." *Secretary of the Interior* v. *California*, 464 U.S. 312, 337 (1984). "Each stage involves separate regulatory review that may, but need not, conclude in the transfer to lease purchasers of rights to conduct additional activities on the OCS" (*ibid.*).

a. During the first stage under the OCSLA, the Department of the Interior prepares a five-year schedule of proposed OCS lease sales. 43 U.S.C. 1344. The Department must solicit comments from interested federal agencies and the Governors of affected States and must respond in writing to comments received. 43 U.S.C. 1344(c). The Department then submits the proposed leasing program to the President and Congress, together with the received comments. 43 U.S.C. 1344(d)(2).

b. The second stage of OCS planning involves the solicitation of bids and the issuance of offshore leases. 43 U.S.C. 1337(a). Before soliciting bids and awarding leases, the Department "must comply with a detailed combination of investigating, consulting and reporting requirements" (Pet. App. A8), which include satisfying the statutory criteria of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.* Under the OCSLA, the Department of the Interior must give the Governor of any affected State a formal opportunity to submit recommendations regarding the "size, timing, or location" of a proposed lease sale. 43 U.S.C.

1345(a). The Department must accept these recommendations if it determines that they strike a reasonable balance between the national interest and the well-being of the citizens of the affected State. 43 U.S.C. 1345(c).

The Department may then proceed with the actual lease sale. "Lease purchasers acquire the right to conduct only limited 'preliminary' activities on the OCS—geophysical and other surveys that do not involve seabed penetrations greater than 300 feet and that do not result in any significant environmental impacts." *Secretary of the Interior* v. *California*, 464 U.S. at 338-339. As this Court has observed, "[u]nder the plain language of OCSLA, the purchase of a lease entails no right to proceed with full exploration, development, or production * * *; the lessee acquires only a priority in submitting plans to conduct those activities" (*id.* at 339).

c. The third stage of OCS planning involves review of more extensive exploration plans submitted to the Department by lessees. 43 U.S.C. 1340 (1982 & Supp. V 1987). Exploration may not take place until an exploration plan has been approved. A lessee's plan, among other requirements, must include a certification that the proposed activities comply with any applicable state management plan under the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.* The Department must disapprove a plan if it would "probably cause serious harm or damage * * * to the marine, coastal, or human environment * * *." 43 U.S.C. 1334(a)(2)(A)(i), 1340(c)(1).

d. The final stage of OCS planning is development and production. 43 U.S.C. 1351. The lessee must submit another plan to the Department; the Department then forwards the plan to the Governor of any affected State for comments and review. 43 U.S.C. 1345(a). "Again, the Governor's recommendations must be accepted * * * if they strike a reasonable balance between local and national

interests." *Secretary of the Interior* v. *California*, 464 U.S. at 340. The development and production plan must be consistent with the applicable state coastal management program. The State can veto the plan as inconsistent, and only the Secretary of Commerce can override that veto. 43 U.S.C. 1351(d). A plan may also be rejected if it would "probably cause serious harm or damage * * * to the marine, coastal or human environments * * *." 43 U.S.C. 1351(h)(1)(D)(i).

2. The dispute in this case, between petitioners, the State of Alaska and a number of interested local and national groups, and the United States Department of the Interior and several major oil developers, concerns only the second stage of OCS planning—the solicitation of bids and the issuance of leases.

a. In November 1974, the Department of the Interior began studying the merits of oil and gas leasing in the North Aleutian Basin, which underlies Bristol Bay off the southwest coast of Alaska. Twice during the next eight years the Department scheduled sales, and twice, at the State of Alaska's request, it cancelled them. In April 1983, the Department requested information and nominations concerning the offering for lease of 5,947 blocks in the North Aleutian Basin planning area. This lease sale, denominated Lease Sale 92, was scheduled for April 1985. In March 1984, following consultations with the State and the State's congressional delegation, Secretary of the Interior Clark withdrew 83% of the planning area from the proposed sale. Even with this substantial reduction in size, the Department continued to share the State's concern about the effects of oil and gas activities on Bristol Bay's resources. Pet. App. A9-A10.

In May 1984 Secretary Clark postponed Lease Sale 92 until August 1985 and began special consultations with the State and Bristol Bay fishermen's organizations. As a

result of these discussions, the Department analyzed available data regarding Bristol Bay's fisheries and other marine resources and recognized the need for additional information. In particular, the Department took into account monitoring studies of the effects of exploratory drilling in another world-class fishery, the Georges Bank in the North Atlantic. These studies found that "[n]o biological impacts which could be attributed to drilling activities were detected at any [monitoring] station * * *" (E.R. 31, at 21).[1] The Department also considered an independent study directed by the National Marine Fisheries Service's Northwest and Alaska Fisheries Center on the effects of oil development in Bristol Bay. That study found that neither "an extensive blowout" nor "an unreasonably large tanker accident" would have "a measurable effect on offshore fishery resources in the eastern Bering Sea" (E.R. 35, at 25). Pet. App. A10.

Along with these consultations, the Department followed its pre-lease process for lands on the outer continental shelf. See pp. 1-3, *supra; California* v. *Watt,* 683 F.2d 1253, 1258-1259 (9th Cir. 1982), rev'd on other grounds, 464 U.S. 312 (1984). It prepared a draft environmental impact statement (EIS), which, as petitioner United Fishermen of Alaska acknowledged, presents "a fairly accurate and comprehensive review of the available information on major species of fish and shellfish" in the North Aleutian Basin (E.R. 39, at V112). Following hearings and public comment, the Department issued a final EIS that explained, among other things, that major oil spills from fishing vessels in the Bristol Bay area had caused only "short-term, local effects" (E.R. 39, at V98), a finding

[1] "E.R." refers to the Excerpts of Record filed with petitioners' brief in the court of appeals.

supporting the results of oil spill modeling studies. Pet. App. A10.[2]

Despite the extensive consultations, the thoroughness of the record developed, and the two prior cancellations of sales, the Governor of Alaska continued to oppose Lease Sale 92. In November 1985, he thus recommended to Secretary of the Interior Hodel that he delay the sale until at least 1994 and that he order 14 additional studies to be undertaken in the meantime. Moreover, the Governor urged that, whenever Lease Sale 92 was to be held, the Secretary should exclude from the sale all blocks within 25 miles of the coast and ensure that leases contain five specific stipulations to protect fisheries and other resources. See E.R. 33, at 2; Pet. App. A10. In the following weeks, the Department continued to consult with State officials to resolve differences in analyses and to explore alternatives to allay the Governor's concerns. Those efforts were unsuccessful.

b. On December 11, 1985, the Secretary wrote the Governor, explaining his decision to reject the Governor's recommendations to delay the sale another nine years and to delete the near-shore tracts. The Secretary enclosed a 72-page "Statement of Reasons" that thoroughly considered the Governor's concerns and corrected the State's

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[2] The Department has also obtained biological opinions under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, from the Fish and Wildlife Service and from the National Marine Fisheries Service. The Department also prepared an evaluation of the effects of oil and gas activities on native subsistence uses under Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120. And, after revising its oil and gas resource estimates for Lease Sale 92, the Department prepared an environmental assessment, see 40 C.F.R. 1502.9(c)(1), to assess the significance of this new information. The Department later determined that a supplemental EIS was unnecessary. Pet. App. A10.

erroneous analysis regarding the balance between local and national interests. See E.R. 35; Pet. App. A10.

In that Statement, the Secretary addressed the Governor's concerns about oil spill risks and data gaps at each of the three remaining stages of the OCS lease process: leasing and preliminary activities (E.R. 35, at 17-20), exploration (E.R. 35, at 20-22), and development and production (E.R. 35, at 22-28). See pp. 1-4, *supra*; *Secretary of the Interior* v. *California*, 464 U.S. at 337-341. The Secretary specifically refuted the rationale underlying the Governor's recommendation to delay the sale. See E.R. 35, at 29-32. He then explained why "it is clear that the national interest is served by holding Sale 92 now" (E.R. 35, at 34): the quantified benefits of the sale "heavily outweigh" the quantified costs, and the "considerable unquantified benefits" outweigh "apparently minor losses in environmental quality" (E.R. 35, at 35).

The Secretary then turned to explaining why the Governor's recommendation to delay the sale "does not reasonably balance the national interest with the well-being of the citizens of Alaska" (E.R. 35, at 37). Although observing that the Outer Continental Shelf Lands, 43 U.S.C. 1331 *et seq.*, does not define "reasonable balance," the Secretary stated that "it is plain that for the balance to be reasonable, the benefits to the State from the adoption of the Governor's recommendation must be in some manner proportionate to the losses to the Nation from its adoption" (E.R. 35, at 37). The Secretary specifically found that, in the circumstances presented, the losses will exceed the benefits (E.R. 35, at 38):

> We have an opportunity to obtain valuable information about the oil and gas resources of the North Aleutian Basin, an opportunity virtually free of risk of significant harm to the environment. If the wells

> drilled are all dry, the Bristol Bay, like the Georges Bank fishing area in the North Atlantic, will be no worse off. If commercial quantities of oil and gas are discovered, both the State and the Department will have the opportunities (and the duty) to weigh again the benefits and costs before allowing development and production to proceed. If additional protection of the environment is needed, the Department will provide it. The decision at that stage can be based on less speculation and on better-informed perceptions of what information is essential to reasoned decision-making. At this time, however, potential losses (quantified and unquantified) to the interests of Alaska from development and production are too slight to warrant the further delay.

Lastly, the Secretary made clear that deleting the near-shore tracts, as the Governor recommended, would not reasonably balance state and national interests: the nation would forgo "the opportunity to explore some of the most promising prospects in the whole North Aleutian Basin" in exchange for only "a slight reduction in risk" to the Alaska peninsula (E.R. 35, at 35; see E.R. 35, at 37 n.32).

On December 16, 1985, the Secretary published in the Federal Register a final notice of sale. 50 Fed. Reg. 51,372-51,380. In that final notice, the Secretary adopted either the text or substance of virtually every lease stipulation recommended by the Governor. See E.R. 35, at 68-72; Pet. App. A10.

3. In late December 1985, petitioners filed three lawsuits challenging the Secretary's decision to proceed with Lease Sale 92. Petitioners claimed that the Secretary's decision violated the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, the Endangered

Species Act of 1973, 16 U.S.C. 1531 *et seq.*, and the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101 *et seq.* Pet. App. A10-A11.

After consolidating the actions, the district court, in January 1986, issued a preliminary injunction restraining the Secretary from conducting the sale. The district court held that petitioners would likely succeed on their claim that the Secretary had not complied with Section 810 of ANILCA (16 U.S.C. 3120), and that such a violation automatically entitled petitioners to injunctive relief.[3] And in April 1986, following its decision in *Village of Gambell* v. *Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*), the court of appeals upheld the preliminary injunction. *Tribal Village of Akutan* v. *Hodel*, 792 F.2d 1376 (9th Cir. 1986).

The parties sought this Court's review of the Ninth Circuit's decisions in this case and *Gambell II*. In March 1987, the Court reversed *Gambell II*, holding that ANILCA does not apply to the OCS and expressly disapproving the Ninth Circuit's "automatic injunction" rule. *Amoco Production Co.* v. *Village of Gambell*, 480 U.S. 531 (1987). One week later, the Court granted the petition for a writ of certiorari in this case and remanded the case to the court of appeals for reconsideration in light of its decision in *Amoco Production Co.* See *Hodel* v. *Tribal Village of Akutan*, 480 U.S. 943 (1987). Thereafter, the court of appeals remanded this case to the district court. 816 F.2d 685 (9th Cir. 1987).

4. On cross-motions for summary judgment,[4] the district court concluded that the Secretary's decision to

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[3] In *Village of Gambell* v. *Clark*, 746 F.2d 572 (9th Cir. 1984) (*Gambell I*), the court of appeals had held that the ANILCA applies to the OCS.

[4] Although the district court's preliminary injunction rested on the erroneous premise that ANILCA applies to the OCS, the Secretary did

proceed with Lease Sale 92 complies with Section 19 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1345, and is neither arbitrary nor capricious. (Pet. App. B4-B12).[5] Accordingly, the district court dissolved the preliminary injunction against the proposed lease sale.[6]

Petitioners contended that Section 19 of the OCSLA requires the Secretary to defer to the views of the Governor of an affected State in the same manner in which a court defers to an administrative agency under the arbitrary or capricious standard of review (Pet. App. B4-B5). The district court rejected that construction of Section 19. The court held that, under the arbitrary or capricious standard of review, which is expressly set forth in Section 19 itself (43 U.S.C. 1345(d)), the court stated that it cannot reverse the Secretary's decision as long as that decision "touched on the relevant factors in setting forth his own, differing view of the state and national interest" (Pet. App. B5).

Applying this express statutory standard of review, the district court found that the Secretary had considered all the relevant factors in disapproving the Governor's recommendations (Pet. App. B5-B12). The district court rejected the State's claim that the Secretary had based his oil spill risk analysis on a faulty assumption. On the record presented, the court found that the difference between the analyses using the State's assumption and the Secretary's assumption was not "statistically significant" (*id.* at B9).

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not seek to vacate the preliminary injunction on remand. Instead, the Secretary stipulated to an expedited resolution of the remaining OCSLA, ESA, and NEPA issues. Pet. App. A11.

[5] In a separate ruling, the district court rejected petitioners' other claims under the ESA and NEPA. Pet. App. C1-C12. The court of appeals affirmed that decision. Pet. App. A16-A18. Petitioners have not sought further review of that aspect of the court of appeals' judgment.

[6] The district court, however, granted petitioners' motion to stay its judgment pending appeal. A motions panel of the court of appeals denied the Secretary's motion to vacate that stay, but agreed to expedite the appeal. Pet. App. A11.

The court also rejected the argument raised by the environmental group petitioners that the Secretary should have considered "seasonal" as well as "annual average" oil spill trajectories in his risk analysis. As the court observed, the Secretary can refine that analysis, if necessary, once drilling "shows the location of oil, if any" (Pet. App. C9).

5. The court of appeals affirmed (Pet. App. A1-A28). It rejected petitioners' construction of Section 19 of the OCSLA, which would require a reviewing court to "determine whether the governor's recommendations fall within the range of reason, not whether the Secretary was arbitrary or capricious in rejecting them" (Pet. App. A13-A14). The court of appeals concluded that the plain language of the statute foreclosed petitioners' reading of Section 19. Under the "arbitrary or capricious" standard of Section 19 itself, the court is not free to substitute its judgment for that of the Secretary. Accord *California* v. *Watt*, 683 F.2d 1253, 1268-1269 (9th Cir. 1982), rev'd on other grounds, 464 U.S. 312 (1984). And the court made clear that "[e]ven if [it] agreed that the Governor's recommendations were reasonable, [the court] could not conclude that the Secretary was arbitrary or capricious simply because he chose to reject them" (Pet. App. A14).

The court of appeals also rejected petitioners' challenges to the Secretary's oil spill risk analysis (Pet. App. A18-A20). It disagreed with petitioners' assertion that the Secretary had "underestimated" the oil that would be produced in the nearshore, observing that "[p]rior to exploration, it is difficult to make so much as an educated guess as to the volume of oil likely to be produced or the probable location of oil wells" (Pet. App. A18). As the court stated, "[m]ore accurate information will be available at later stages of the exploration process, and the Secretary can make appropriate alterations in the oil development plan at that time" (Pet. App. A19). Lastly, the court concluded

that both the Secretary's methodology and his analysis of the evidence presented were reasonable. *Ibid.*

ARGUMENT

The decision of the court of appeals is correct. It does not conflict with any decision of this Court or of any other court of appeals. Therefore, further review is not warranted.

1. Petitioners renew their contention (Pet. 15-23) that Section 19 of the OCSLA, 43 U.S.C. 1345, "was specifically intended to require the Secretary to give substantial deference to the recommendations from an affected coastal state's Governor" (Pet. 17). Under petitioners' reading of Section 19, the Governor of an affected State would effectively determine both the "national interest" and the "well-being" of his State's citizens with regard to the given lease sale, and then be responsible for striking the reasonable balance between the two interests. According to petitioners, the Secretary would then be obliged to accept the Governor's views on each of these factors unless they represent a clear error of judgment. See, *e.g.*, Pet. 21.

a. As the court of appeals correctly held, however, the plain language of the statute forecloses that argument since the statute confers ultimate responsibility on the Secretary of the Interior, not the Governor of any affected State. Under the statute, the Secretary submits to the Governor of an affected State a copy of a notice of the proposed lease sale, so that the Governor, within 60 days, "may submit recommendations * * * regarding [its] size, timing, or location." 43 U.S.C. 1345(a) and (b). The Secretary "shall accept" those recommendations "if *he* determines * * * that they provide for a reasonable balance between the national interest and the well-being of

the citizens of the affected State." 43 U.S.C. 1345(c) (emphasis added). Thus, the statute expressly vests in the Secretary—not the Governor of any affected State—the responsibility to determine whether the recommendations strike a reasonable balance. And, as this Court has noted, "Interior is required to accept these recommendations if *it determines* they strike a reasonable balance between the national interest and the well-being of the citizens of the affected State." *Secretary of the Interior* v. *California*, 464 U.S. at 338 (emphasis added).

Moreover, contrary to petitioners' construction of Section 19, the statute neither requires the Governor of an affected State to formulate his view of the "national interest," nor requires him to present recommendations that balance state and national interests. By its terms, Section 19 leaves the Governor free to make whatever recommendations he chooses concerning the size, timing, or location of the proposed sale. 43 U.S.C. 1345(a). Section 19(c) directs only the *Secretary* to determine whether the recommendations reasonably balance national and state interests. 43 U.S.C. 1345(c). And Section 19(d) makes clear that the Secretary's decision on whether the balancing is reasonable is "final * * * unless found to be arbitrary or capricious." 43 U.S.C. 1345(d).

b. We fully agree with petitioners that Congress intended States to have a "leading role" in certain aspects of the OCS lease process (Pet. 19). But, contrary to petitioners' claim, their construction of Section 19 is not needed to ensure that state of affairs. Before the 1978 amendments to the OCSLA, the Secretary had no duty to consider the "well-being" ~~of~~ affected States in determining whether to hold a lease sale. Instead, the statute authorized the Secretary to lease offshore lands "[i]n order to meet the urgent need for further exploration and development of the oil and gas deposits" of the OCS. 43 U.S.C.

1337(a) (1976). In 1978, however, Congress amended the statute by adding Section 19's express requirement that the Secretary consider a State's interest not only as a part of the "national interest," but yet again in its own right as something to be balanced against the national interest. 43 U.S.C. 1345(c); see, *e.g.*, E.R. 35, at 36-37.

As the court of appeals has previously recognized, Section 19 does not define "the well-being of the citizens of the affected State." *California* v. *Watt*, 683 F.2d at 1269. Thus, as the statute itself requires, the Secretary here deferred to the Governor of Alaska, in the first instance, to give meaning to that relevant factor with respect to Lease Sale 92. See E.R. 35, at 36. The Governor therefore has, and in this case played, the "leading role" in defining his State's well-being concerning Lease Sale 92. And through this authority, the Governor sets the terms of the debate over whether his recommendations reasonably balance state and national interests.[7]

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[7] Petitioners' reference (Pet. 4) to the recent oil spill involving the Exxon Valdez is both gratuitous and irrelevant. As this Court recognized in *Secretary of the Interior* v. *California*, 464 U.S 312, 337-341 (1984), and as we have described (see pp. 1-4, *supra*), Congress established four distinctive stages in the administrative process for offshore activities in order for the Secretary, without making any commitment to continue to the next stage, to make decisions about whether and how to conduct such activities based on the information available at that time. Moreover, it is clear that no adverse environmental effects can result from activity at the lease stage. Lessees are entitled to no more than preliminary exploration in order to inventory generally the oil and gas deposits, if any, that lie in Bristol Bay. See *Secretary of the Interior* v. *California*, 464 U.S. at 338; pp. 2-3, *supra*. Before any significant exploration, development, or production can occur, the Secretary must review and approve plans submitted by lessees. And the State of Alaska must agree to those plans under Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(B). Accordingly, the Secretary retains full

2. Petitioners also renew their challenge to the Secretary's oil spill risk analysis, contending that the Secretary misallocated an estimated number of barrels of oil in that analysis (Pet. 25), and failed to consider seasonal changes in the oceanography of Bristol Bay (Pet. 26). Petitioners fact-specific claims are insubstantial and do not merit this Court's review.

First, petitioners ignore the district court's specific factual finding that there would have been no significant difference in the outcome of the Secretary's oil spill risk analysis even if he had used petitioners' allocation of oil (Pet. App. B9). Thus, even if the Secretary's allocation were erroneous, as petitioners contend, his ultimate decision to proceed with the lease sale would not be "arbitrary or capricious." Second, the Secretary will consider seasonal changes in the local oceanography before approving any plan of exploration for a Lease Sale 92 tract. The governing regulation requires lessees to submit "[o]il spill trajectory analyses which are specific to the area of operations." 30 C.F.R. 250.42(a).[8]

Finally, the court of appeals' refusal to disturb the Secretary's oil spill risk analysis is consistent with *Secretary of the Interior* v. *California, supra,* and decisions from other circuits. See, *e.g., Park County Resource Council, Inc.* v. *United States Dep't of Agriculture*, 817 F.2d 609, 620-624 (10th Cir. 1987); *North Slope Borough* v. *Andrus,* 642 F.2d 589, 605-606 (D.C. Cir. 1980). As described above, in 1978 Congress divided the scheme of

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control over all OCS activity, including the ability to limit or impose stringent conditions on further activity and, if need be, to cancel the leases.

[8] In addition, as we fully described in our brief in the court of appeals (see Gov't C.A. Br. 27-43), the record here shows that the Secretary's allocation of oil and use of annual trajectories were reasonable.

OCS development into four stages. "The stated reason for this four-part division was to forestall premature litigation regarding adverse environmental effects that all agree will flow, if at all, only from the latter stages of OCS exploration and production." *Secretary of the Interior* v. *California*, 464 U.S. at 341. Here petitioners are in a vain pursuit of "accurate information" (Pet. 24) about where the oil is, how much of it there is, and where it will go if it is spilled. As the D.C. Circuit has correctly observed, "[i]t is more logical and efficient to ask certain questions when the truth of their premises is unveiled." *North Slope Borough*, 642 F.2d at 606. Only exploration will provide the basis for answering petitioners' questions. And the court of appeals correctly determined that petitioners' fact-specific challenges are the very sort of "premature litigation" Congress wished to avoid.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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